THE MICHIGAN RAILROAD CONSPIRACY-

Gar. Seward's Argument.

But first, where is the truth of these accusations to be tried. They are accusations of local offenses which ought of right to be tried at home where the accused party live, by a jury of the trucinage, and not elsewhere nor by a jury of strangers. The accused ought to be at large on bail, to produce the evidence to confuse the calumninors and yet they have

We again now whether the existence of the alleged coordinary is established by the admission and declarations of the defendants and the inquiry involves the credibility of the witnesses by whom they are proved. Win D. Wewood contributes the greater part of the evidence. You recognize in him the early leader of the legion of informers. He was displaced to make way forthe superior merit of Henry Phelps. We cott is rendered a suspicious witness, first, by his attitude of hireling information. His testimony begins at the time when he went into the employment of the Raitroad Company, in that character, at the rate of \$40 per month. He still retains the place and its emoluments. Secondly, he is discredited by his former life. He was indicted for perjury at Mackinaw, and the indictment abated by vergadal. No mortal arm could nurl a stone from the verandah through the window with force enough to commit an injury. No mortal eye could see through the verandah, nor mortal force throw a stone that would reach through the verandah and the win-

dow.

But, Gentlemen, you will recoilect that Wescott obtained his knowledge of this plot by drawing himself through a hole in the wall and listening to the conspirators through the floor of the bar-room. Un fortunately for Wescott's veracity, Mr. L. A. Hildreth, who opened that hole in the wall for the purpose of driving the joints of the water-pipe, testifies that it was not large enough for a man to enter. Darius Clare comes to the relief of Wescott and testifies that in November last Wescott pointed out the place to him and that it was then as large as now, but Ammi Filley, Jr., a lad of 14, proves that Clark must have erred in date, because on Christmas day, when a piece of com had dropped through the floor in the bar-room, he found it impossible to pass through the aperture to find it. And this chird is corroborated by the witness who first opened the aperture at a day later than that fixed by Clark. Wescott described a second peril—that, pursued by an infuriated man with a ferocious dog through the deer park, he plunged to his armpis into the inidiand mire of Wolf Creek, and he gives us, for confirmation of that peril and escape, his assertion, that his wife removed the mid from his clothes. I admit that some unknown person lurking on the watch was chased by a dog into Wolf Creek, but I still must withhold my behef that Wescott was the fagitive. I can scarcely believe that a man who would be thus engaged could have a wife, much fees that be proved, tout Fitch and himself v the door tooking on upon the strife, and that Fitch afterward remarked, that, if he had known Wescott at that time to have been a spy, he would have thrown him in among the combatants that they might have beaten him to death. Unfortunately for the effect of this fearful narrative, it is dispreved by Almon Cozier, who says that neither Wescott nor Fitch was at nor near the door of the bail alley, from the time when the controvery began until the combatants had retired to adjust it, as I presume, over a bottle in Filley's barroom. The testimony throws but a dim and showly light over the fourth and last critical escape of the ci-devant leader of the band of spies. The Produce in this city published on some authority, "A leaf in the history of the conspiracy," and it was republished generally by the papers throughout the linited States. This leaf revealed the dreadful fact that one of the informers was actually present, in disquise, at a regular meeting of the couspirators, in which it was solumity resolved to put him to death, and that the solo of executing that sentence was put up at auction and sold to the lowest bidder at \$100, the bidder reserving to himself the right to decide on the mainter of execution, but being bound to perform it within four days. Wescott ormed that he had put that report in circulation. William Harsha, one of your most respectable citizens, came upon the stand and offered to testify that Wescott, referring to the publication, by implication confirmed its truthelness and its application to himself. But the rules of evidence insisted on by the prosecution and sustained by the Court, excluded the testimony.

I proceed to examine the evidence of Wescott, promising you that, in the first place, what there is of it that is not contradicted directly or by internal evidence, is worthless; and, secondly, that what has any peritimency as thus contradicted. His testimony is to this effect; that, when he repaired to Michigan Centre, in the Fall of 1850, he piaced himself on an apparent footing of m the door, looking on upon the strife, and that Fitch afterward remarked, that, if he had known Wescott

self on an apparent footing of ministe friendship with the defendant 5 itch; that 5 itch, under those circumstances, gave him a narrative of what "the boys" had done, in 1849, that they had secreted themselves in timbered lands, their russhed out and obstructed the cars, after the hand-car had passed before, that Fitch said "the boys had stoned the cars, had placed strap-iron between the joints of the rails, and, mockingly said, also, that Elder Limbocker and Priest Poster committed this depredation, that he had remonstrated with them, but they were hard cases, and would not desist, that in speaking of the accident, which had befallen the Gazelle, he said the locomotive got dry, and rail down to the marsh for water, that he had advised the boys not to throw trains off at the dry marsh, as that would be too bad, that one morning, at Michigan Centre, when the cars were due, Fitch looked up into the sky, and predicted that they would not arrive till alternoon; that this occurred, as Wescott says, on the day when the cars rain of at Galesburg, amely miles distant; that Fitch said he had written to Chicago and had ordered handbulk warning people not to travel on the road, on account of the obstructions, that this was the only way to bring the amely miles distant: that Fitch said he had written to Chicago and had ordered handouls warning people not to travel on the road, on account of the obstructions, that this was the only way to bring the Company to terms, and make them pay for cattle, that the Railroad Company had offered a reward for Fitch's detection in committing depredations against the Company. That, suppose he should be arrested, he could find milesses enough in the State, if not in Jackson County, that they never would convict him, that Fitch said he would shoot Wescott on the stand, if he should swear against him, that his friends would do so, if he should be unable to do it himself, that he had friends who wend stand by him, who were little suspected, and named among them flarry Holeomb. Col. Delamater, and many others of the most respectable etitizens of the county in which he lived, that he would deep all held to convict him, and that he could never lack witnesses."

So We scott testified that Firiev, when speaking of the accident to the Gazelle, said that they had got a big coon out had lost its tail, that the ded rairroad had sued him for timber, that he to days he would make them wish that a Flich or a Fhiey had never been corn, that Filley said the Company had suel him for straing lumber, that they would want more, for he proposed burning the depot at Jackson, that on the same day Filley proposed to Corwin to burn the depot there, saying that there were shavings around it which would make it easy.

Thus far the admissions or declarations proved by Wescott, if they have been made, are valueless, for they show nothing more than feelings of hostility on the part of Fitch, and of passion and hatred on the

part of Filley. They show no connection of both of 1

me more material statements of Weshim that he "had advised Barrett to tiring three soits against the Radrond Company for callie killed, not meaning to have them tired, but to fass in the law till the spies should leave, and then they would have a grand smash, worth a dozen lawsuits," and the Company would begin to think "there was a God in Israel." that Fitch, subsequently, in his partor, explained to Wescott alone what "was intended by this grand smash," that he was determined, with the boys, to bring the Company to terms be fore the state Fair was over that, in order to show that the prevailing feeling was not a local one, he intended to throw the cars off at the white bridge at Jackson, at the dry marsh, and at the high embankiment, "three the dry marsh, and at the high embanament, "three places of peculiar danger," that "he would thus kill a hindred and fifty passengers at the State I air, and that thus they would bring the Company to terms and if this wouldn't, then, in God's name, what would "If we fail in this, then, God dama 'em, we'll burn'em out." We scott says that Fitch, in the same connection, "offered him a thousand dollars to burn the depots at Detroit, Ann Arbor, Jackson and

Who believes Abel F. Fitch to have been insane.

Noone. Who believes that a sane, educated man, living in such a country as this, could conceive a purpose so atrocious, or that, cocceiving it, he should impart it to another. Abel F. Fitch was a man of the strength of th

Who does not see that the conception of such crimes is absurd, because it exceeds the experienced depravity and folly of the human heart? The depots of the M. C. R. K. Co were safe against the incendary, if the conflagrations were to be postponed until the commission of a hundred or a hundred and fifty murders. Where was the defendant Fitch to find shelter after the commission of these fearful crimes? No one has ever heard of that projected "grand smash" but Wescott. On the very first day of the State Fair, when it was to take place, Fitch with his wife and daughter, Col, Delamater and other friends, arrived at the State Fair by the cars which were to be thrown from the track. A portion of his family and friends came by the cars of the third day and it happened that there was no train of cars passing between visionial and Michigan Centre during the three days of the Fair, in which himself or some of his family or immediate personal friends were net found. Who does not see that the conception of such

ound.
The remark imputed to Filley, that there would be to need of codins, bears intrinsic evidence of being comed by Wescott's own turgid imagination. So the remark about the scene, where the survivors should be looking down on the mangled remains of the dead and the dying, while the conspirators should be feeland the dying, while the conspirators should be feeling of the mail bags and subjecting the R. R. to
damages to Uncle Sem for the detection of letters,
could have proceeded from no other brain; and evidence enough that these high swelling and gigantic
words, with their lame and impotent conclusion,
never preceeded from the mouth of Filiey, is found
in the fact that Wescott equally draws the same terrific phrase from off the longue of Win, Corwin, a
teamster, and from off the longue of Orlando D. Willams, a common stone mason.

teamster, and from on the tips of Orlando D. Wiltams, a common stone mason.

Of course, gentlemen, even though these declarations and admissions were not made by Fitch and
"filey, Corwin and Williams, no one can prove that
fact, because they are alleged to have been made to
Wessoit by those parties in private conversations We scott by these parties in private conversations with him alone. But, fortunately, when a witness stands impeached in character, his testimony isto be rejected, unless it be confirmed, and when he is contradicted in one essential fact, that one contradiction overthrows his entire evidence. You have him his refutation and contradiction in regard to several essential facts. There are more such refutations. We find one in the celebrated window scene. We scott testifies that, one evening in August, 1850, he crept into the court-raid of Fitch's house, through the space made by displacing the lower end or base of one of the packets, while it hang by a nail on the upper bar, drew himself under the testroom window, looked through the guare curtain, saw Mr. and Mr. Fitch returns to bed, and there heard him say to her that "they were watched close; that they must hold up till the thing settled down a little. that the boyshal, within a few weeks back, knocked the Co. to the tune of \$20,000."

You cannot have forgotten, that Westcott, in giving the normative on his direct examination, alto gether omitted Mrs. Fitch sreply, and with what sus-picious promptices he supplied the defect when it was pointed out to him on his cross-examination. "Mrs. Fitch said she thought he had better let the gether omitted Mrs. Fitch's reply, and with what suspicious promptuess he supplied the defect when it was pointed out to him on his cross-examination:

"Mrs. Fitch said she thought he had better let the Railroad Company alone, and mind his sown business." You cannot have forgotica that he saw in the room the safe, which was a dark object, on one side, while he could not see the bed, which was a large white one, lying almost before him. The identical fence through which he alleges he passed, stands before you. Neither in that panel, nor in any other, is a pichet that was loosened, and the whole was new and painted more than a year before the transaction is said to have occurred. If a picket had been displaced, it would have made a space of only four inches. We scott is a young Faistaff. When pursued by dogs into Mud Creek, like his great prototype when cast in his bischbasket into the Thames, he could have exclaimed, "If the bottom had been as deep as hell I should have found it." But even Calvin Edson, who was exhibited as a living skeletom, could not have gone through that fence. Amanda Fitch and Charlotte Beman proved that from July to the insidle of September Me and Mrs. Fitch slept in an upper chamber. I waive the testimony of Miss Clark, because of the confusion into which she fell about dates. An attempt was made to show that Mr and Mrs. Fitch occupied the lower bedroom in the Sammer, but it totally failed. The witness Burr testifies that on the 29th of August, at about 8 o'clock in the morning, he found Mrs. Fitch in bed in that room, which might have happened in consequence of temporary ilmess, but Mrs. Fitch, who came upon the stand to support the testimony of her daughter and Miss Beman, and who was exhaused beyond dispite or contradiction.

We scott made a strong point by a conversation, before adverted to, in which Fitley pand Williams honey on account of the Gazelle, but this is disproved by Crowell, who was present, and who was dincessing the testimony of the road, unless they had been adverted to

Do you hot see how animinary this distinuous is adapted to the exicencies of the prosecution. I imagine I hear the counsel, Van Arman, say, "Wanted-proof of a conspiracy," Wescott. "They called themselves the Leonthand." Van Arman. "Wanted evidence that Pitch belonged to the Leonthand." Wescott. "Fitch said he, Fulcy and Corwin were

"No man reaches the hights of crime at suce "

the Leoni band." Van Arman "Wanted-proof that the band was banded together." We scott "Fitch and, we are banded and conspired together against the Radroad Company." Van Arman sand dollars. Van Arman, Wanted evidence that Williams proposed to extort money from the Company. Wescott. Williams suggested a pro-position to be made to the Railroad Company, through Mr. Joy, for five thousand dollars a year for five

"We know thee to the bottom; from within
The shallow center to the utmost skin."

I pass to other evidence in support of the conspira
v. Here is a fetter from Abel F. Fach to Mr.
brooks, the Superintendent of the Railroad Com-

yours &c... Abel F Frees."

And here is the answer, which we have proved was given to this letter. Iffere Mr. Seward read the answer.

A perusal of these documents shows that Fitch's communication was a friendly though carnest remoistrance against proceedings of the Company, and that it was received and regarded as such. Had it been heeded all would have been well. Five himdred dollars would have paid all the damages chaimed by complaining parties for the destruction of their cattle, and the payment would have prevented all danger and all tumult.

Henry browntestifies that Fitch, Freeland and Filler which not when logether, but separately, and on different occasions. "We will let them know there is a God in Frael that they could have no sympathy for the Company, that the way the Company arted, the dry marsh would be a good place to let them down." Brown was a poor, illiterate negro, doubtless honest, but incapable of correctly reporting a declaration or admission, as is seen in the fact that he attributes precisely the same remark to three different persons. The threats which he proves, if his testimony is reliable, were nothing more than outbreaks of popular passion, in a private conversation.

I shall waste title time upon the declarations

ferent persons. The threats which he proves, if his testimony is reliable, were nothing more than outbreaks of popular passion, in a private conversation. I shall waste little time upon the declarations proved by Woliver. He says that "all the defendants," (although they were never together.)" seemed to coincide in tearing up the track, and in saying that they had had their property killed, and if they could not revenge it one way, they would in another. They would never give up until the place was satisfied for damages, that they would carry out their objects in some shape, and that Fitch said they would hang together." This is testifying upon a new principle of swearing made easy—that is, Woliver gives us the effect of what forty different men said on different occasions, individually, under the general caption, known in the law books by the term it semble—it seems. Woliver was a vagabond, and, as has been already shown, a false one. The testimony convicts him of having consumed a whole barrel of whisky in a single Summer. The evidence he gives of the depredations, which were actually committed, shows that they were individual, casond, unpremediated crimes, and disproves what he gives for the purpose of showing a confederacy among the defendants.

Joshna Wells says that "Fitch said that they could

for the purpose of showing a confederacy among the defendants.

Joshua Wells says that "Fitch said that they could not convict any one of the offenses that had been committed, that when Filley said they could prove they were at Bear Creek, Fitch replied they could get what witnesses they wanted there; that on one occasion Fitch showed how a car could be thrown off by a wedge, and how a rail could be placed so as to strike the lamp of a locomotive." It is easy to see that these are mere speculations of Fitch, arising out of the transactions of the times, produced here with some little perversion, to sistain the charge of conspiracy. A prudent man—a prudent jury—will require evidence of the whole conversation, or reject such fragments.

as many men as he wanted, and he was prepared for the whole damned Company." The wimess Burr shows that Fitch was a sportsman. His guns were kept for exercise. The remark was made in reply to an insulting threat made by Spailding. You will take the same view of the reply which one of the witnesses says was given by Filley, and another says was given by tech, to Stone, when extinguishing the fire of the wood pile, that they ought to be burned up with the wood, and then the Company would pay their owners half price for them—nere idle and unmeaning passionate words. In the same caregory are Fitch's reply to Holden, at Gardner's grocery, when asked what they meant by stoning the cars, "that the Company would get worse than that if they didn't pay for the cattle killed, and that every animal killed had cost them \$100, a similar remark made to William J. Welling, "that the cows cost the Company \$150 each," a saying of Commis to the witness Henry, "D—n'em, let them pay for cattle, if they don't want remark made to William J. Welling, "that the cows cost the Company \$150 each," a saying of Corwin's to the witness Henry, "D—n'em, let them pay for cattle, if they don't want to be shot." Corwin's comment upon the Railroad Dream, when upon reading "how a rich corporation killed a poor man's cow, and the poor man prosecuted and yet faid to withdraw his sunt." Corwin commented. "By G—d, the people of this town won't stand such operations." The threat of O. D. Whitams that "He had stoned the cars, and would as long as he stand in Michigan Centre." and another proved by Henry, to wit that Williams, when he had a cow killed said, "If they didn't pay her value, it would be a dear low to them." also, his declaration, hat the "Road ought to be torn up till they paid for the cattle, and then they would go along peaceastly." so, also, Freeland's remark. "That a plant could be laid to blow up the Railroad, by placing powder under the rails." and a remark imputed by Dexter to Fitch, to wit. "On one occasion when the cars run off, he said he wished it had injured them more and his declaration, proved by Knickerbocker." That the Judges of courts could be frought under the influence of the Company, and there was no redress for the poor man, and that the company was an arricoracy and a monopoly." These and other kindred expressions, abounding in the case, are intemperate, but creaty and a monopoly." These and other kindred expressions, abounding in the case, are intemperate, but creaty and a monopoly." These and other kindred expressions, abounding in the case, are intemperate, but create and his declaration, proved by Knickerbocker. Organized conspiracy. They are evidently dissevered, disjointed parts of popular debates, of which no more can be gathered from the dismembered seatences, than the system of the theology of the Bible from cross-readings in the Concordance. Discussion of the wisdom and impartiality of Judges is not interdicted by the Constitution, and error in that respect, like error on other pointical subjects, m

chered him five hundred dollars to burn the May Flower and the Atlantic steamboats, and that Wilhams sade Finch. Filley and Champlin would be his backers." Dobbs was a city runner and bully, who was rusticating in the country. Williams, a village mechanic given to occasional intoxication, especially when visited by such worthes from the Capital, he probably was not worth at that time five hundred conts. He may have magnised himself and his relations with Fitch. Filley and Champlin, in saying they would be his indorsers, but if such conversation occurred at all. It was in some bar-room revel, as an interlude between those interesting "fights," in which he and Dobbs knocked each other down, by way of rettling the important dispute whether a wold dollar was larger than a five cont piece.

Mark English contributes, in aid of the prosecution, a statement that Fitch, in September, 1849, said. "We have had a plan to fix the road in such a shape that the Company will be unable to find an engineer to run on the road." When I asked the reason, English adds, "he said they would not be wilking to run the risk of their lives—that it would not answer for Brooks to go over the road." English was a laboring main, employed by Pitch for a short period. Ignorant of the force of the terms used, he gives, countlessly, the designation of a "plan" to speculations in which Fitch may have indulated concerning the constition of questions then agitating the public mind, and this, probably, involuntary error is all that gives his testimony any effect.

Charles Rogers says he worked two days in harvest, for Pitch, in 1849, that he heard. "Filly speak of a piece of timber to be placed in a culvert, so as to be drawn by a rope after the hand-car had passed and he heard Filch speak of percussion caps, and of a machine to throw the cars off in the right place, and then be removed and saved to be used \$t\$ some

other time, that he heard Fitch say he was willing to turn out with his team, and tear up the track, but didn't say hore far he would fear it up." What an unfortunate forgetfulness? Fitch must have assigned inputs—at his garden wall, at the end of his orchard, or deer pars, or at the high embankment, or at Dexter, or at Ann Arbor, or at the gates of Detroit, or on the banks of the river; but conscientious Charles Housers forgets them.

In regard to these two last witnesses, it is only nemark to recall the remark hefore made—that testicated to the second to to

If laise, it may be dismissed at once from consideration.

I remark, however, in regard to all these alleged declarations and admissions, that the testimony hears the unequivocal impress of fraud and fabrication. A conspiracy was to be proved. That was essential in the case. What else was indicated by Wescott's remark to Taylor, that a wee would be wound around Fitch, which would drag him to state's Prison. What else was meant by Pheios's remark to his wife at Laycock's house, that "if Wescott would do as he agreed, he would come a good drive over Fitch." What could it mean but that Wescott and his associates should frame and fabricate the evidence of a conspiracy to connect the trespasses at Leoni with the alleged arson of the Depot at Detroit. The task of forging this conspiracy was assigned to Wescott,

of plans and plots and conspiracies are mainfestly false, because no such plan, plot, or conspiracy has ever been developed. We are asked to believe there was a plot to burn four depots. No depot was ever burned: a conspiracy to destroy a hundred and and fifty lives no life was ever destroyed. The question of the conspiracy then stands thus. Is. The evidence consists of overt acts committed by persons unknown and without explanation. 2d. Of over acts with explanations, of the attendant circumstances, which altogether exclude the idea of conspiracy. 3d. Of alleged meetings, in which nothing was agreed and nothing conspired and which meetings were never held. 4th. Of individual expressions of resentinent passion or revenge, rebuiting even a presumption of nutural understanding or concert. The pretence of a conspiracy fails, because what was done was done by those who did not conspiracy never was executed, neither by the conspiracy nor by others, and never came to the knowledge of the actors in what was done. Only four defendants are proved to have committed criminal acts, and there is no evidence that they ever conspired for any ulterior object or purpose. This allegation of a conspiracy then is lorger from the case. The proofs in support of it were admitted on grounds which have failed. It is a false besite. The issue is not whether felomous crimes have been committed in Jackson Co. attended by attractious threats. Crimes have been committed, but these crimes, whether with or without such threats belong to the jurisdiction of Jackson to, and not to yours. An attempt to try the defendants for them is an act of usurpation. It is an usurpation which can only lead to retaliatory aggressions of the same character by the people of Jackson County. The conspiracy of the crime of burning the depot at Defroit. If the crime was committed, the defendants must be equally convicted whether

hope there may never be another.

Gentlemen, there are two classes of defeadants, viz. First, those who are charged with the crime of burning the depot at Detroit only through an alleged connection with a pretended conspiracy. Second, those who besides that connection are also directly charged with the crime by pretended admissions of complicity or knowledge. The latter class must abuse your examination of the whole case. I am ready to show you now that the first class are entitled to be acquitted. There is no evidence at all against Irs Beebe, nor against Russel Stone, nor against John W. Welch, nor against Welcome Hill, nor against John W. Welch, nor against Welcome Hill, nor against Mill, and the state of the prosecution have anticipated me by excusing this defendant from further attendance. Nevertheless you must pass upon his case. Phelps says that "about the midcie of March last I found Showers, Filley, Lake, Champlin and others at Michigan Centre. We talked about my journey to Niles, and about the difficulty in burning. Did Showers hear this conversation. If he heard it, yet he said nothing. The Detroit depôt was burned in November. 1550, the conversations in March, 1851. You will of course arguit Hearty Showers.

Dr. Arba N. Moulton, He also does not appear. Jacob Wollver says "Dr. Moulton and others told me to lock out for spies, for they were watching us." Wells says, "Laycock told me he borrowe; from Fitch." S. A. Williams says, "that at Rome Dr. Moulton the pasiot which Caswell received from Fitch." S. A. Williams says, "that at Rome Dr. Moulton the pasiot which Caswell received from Fitch." S. A. Williams says, "that at Rome Dr. Moulton the pasiot which Caswell received from Fitch." S. A. Williams says, "that at Rome Dr. Moulton the pasiot which castell up and clear out, as they were suspected of being spies." You remember that Smith made a show of proof that Terrili on

gentlemen, must be for Terrili.

Wm. S. Warner. Phelps says that last March, three months after the Detroit depot was burned,

whether it was above par. Another witness says
that, on being arrested, Warner asked who Phelis
was, and said he did not know him. Be pleased to
acquit the deterdant Warner.
Benjamin F. Burnet. You see hun there, he won

ed, and the witness added that Lemn said "this was right, the people would have their revenge." If indeed Lemn said all this, I grant hast it was road law and tad morality, but it was not arson. Dixon, the wheat buyer, relates that Fitch told him that when Lemn went up to the place where the Dexter had been run off, he slipped a knife into his sleeve. This is heresay. A vergict, gentlemen, for Napoleon B. Lemn.

all my cheats. Hay was at Filter's on the night of April 11th—that mysterious night. But he did nothing, he said nothing, and according to Phelps, Lake

and Faulkner, it was allowed to hear nothing. When John Faulkner, "the woodman," arrived at Jackson, at surrise on the morning of the 12th, he looked around and saw a man mounted on a high white horse, and he thought the man was Hay. But certainly it was not hay, and probably the horse itself was only a crotesque and fleecy passing cloud. A verdet, then, for hirran Hay.

Grandson Filley Phelps and some of the defendants attended a ball at the house of Grandison Filley in March last. But Filley is charged with doing acting, and saying nothing there. Dr. Hann says that in the cars, when the prisoners were committed by the same of the said, "If I could get hold of that dumn'd Hank "helps, I would make mince meat of him. He has been about all whiter, pretending to be vesting, and now he has come out and exposed the whole matter." Which of these three persons gentlemen, shall we send to the

for the reason that they could get witnesses enough to swear them clear. I thank gentlemen, although there may be treason, yet that there is no arson mail this, and therefore I ask the acquittal of Gleason. John Palmer. Pheips alleges that Palmer remonstrated with Minor T. Laycock against becoming a witness and a sy, for the Railroad Company but masmuch as this testimony is contradicted by Christie Blackman, who was present on that occasion, and is harmless if true, you will at once discharge John Palmer from the indictment.

Lester Penfield. He was present at the dimer at John Palmer's. Wells says that he asked Penfield if he was not afraid, masmuch as his sled was shod with old railroad fron! He replied, "No' they never context prove anything; they had true several times and railed," Penfield, according to Mr John Dowale, when speaking of trespasses upon the railroad in Leoni, and "the people were contending for their rights." Undeubiedly they were, gentlemen, but they were contending in a wong way. Nevertheless, I think you will restore Mr. Penfield to his mill. He is wanted there.

s wanted there.
Abner Grant. He has neither done nor said any.

Abner Grant. He has neither done nor said anything worthy of bonds. Barrett has only prosecuted the Raifroad Company for his cow that was destroyed. It was a grievous fault, but he has already grievously answered it.

William Champlin. He did not write the "Price Boys Warning." Phelips relates that Champlain said at Filley's, that he would like to have seen the depot at Detroit burn, with Brooks in it, but Hart Holmes proves that Champlin was not at Filley's on that occasion.

proves that Champin was not at Filiey's on that oc-casion.

Minor T. Laycock did not fire at an engineer, even if he received loaded pistois for that purpose. Phelps says that Fitch told him that Laycock knew that \$150 was paid for burning the depôt, but sid not know to whom it was paid. This is mere hearsay, and Lay-cock must be acquitted.

E. J. and R. Prict. Phelps informed us that Price, without distinguishing which of these two defen-dants, admitted that he had contributed to the fund to burn the depot. We cannot ascertain which one ought to be punished, and therefore I think you are bound to acquit both.

Die the defendants hire and procure Gay to burn the depot. The case on the part of the people is.

inst, and beyond a reasonable doubt, before you are at liberty to enter upon the question whether the defendants were accessories. In regard to the crime, then, you will mark that no human eye saw Geo. W. Gay set are to the cepot. The assumption that he committed the crime, rests on the concecutruit that the depot was consumed somehow, and on evidence of admissions and statements supposed to have been made by him and by the defendants. Such evidence is at once the most uncertain and unsatisfactory of all testimony. I dwell upon this because there is a common notion that admissions are conclusive, while no notion is so erreneous. With respect to alivertal admissions, sava Greenleaf, (vol. f., p. 200.) it may be observed that they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection or mistake, the party himself other being misinfermed, or not having clearly expressed his own meaning, or the witness having misunderstood him. If frequently impopens also, that the witness, by unintentionally altering a few of the expressions really used, gives a completely different statement of what the party did say. The zeal, too, which so penerally prevails to detect offenders, especially in cases of aggravated shift, and the strong disposition in the persons engaged in pursuit of evidence to rely on slight grounds of suspicion, which are exaggrated into sufficient proof, together with the character of persons necessarily called as witnesses in cases of secret and atrocious crimes, all tend to impair the value of this kind of evidence, and sometimes to lead to its rejection, when in civil actions it would have been received.

The weighty observation of Mr. Justice Foster is also to be kept in mind, that this evidence is not to the refuted in the ordinary course of things, in the way by which the proof of plain facts may be obvisted. (I Greenleaf, 213.) "Hasty confessions made to persons, having no authority to examine, are the wea

to persons, having no authority to examine, are the weakest and most suspicious of all evidence." (Foster's Discourses, 243.)

These principles apply with infinitely greater force when the alleged submissions are procured for hire and reward. I ask you now to assume a further principle, which the Court must charge you to be true and no one will gainsay, which is that no admission concludes against the fact. An admission concludes against the fact An admission does not bind, if the fact is not true. This an admission cannot bind if the fact be impossible, because if it is impossible it is not true. The law is so tenscious of this principle, that if Gay should have declared that he burned the depot and if all the defendants should have confessed that he did so and that they had employed him to burn it, and if it should appear in fact that the depot was not burned at all, or that although it was burned yet that Gay was in Buffalo or in bed at the time of the burning, the evidence of the confession must be rejected.

Without reviewing now the admissions alleged in this case. I shall show you, in the first place, that they must be rejected and that the defendants must be acquitted, sections the manner in which the crune is confessed to have been committed was impossible. This is a distinct and independent defense, for if it was impossible to burn the depot in the manner described, then the defendants must be acquitted nevertheless, although all other positions assumed in their behalf should fait.

I proceedio show that it was impossible. This in-

I proceed to show that it was impossible. This instrument is of the same xind with that with which the depot is alleged to have been hurned. It is not the same instrument, for of course that one is assumed to have been destroyed by the fire it kindled. But the description of that instrument is given us by the witness Phelps, as he obtained it from Gay, the supposed incendiary, and from Fitch and Phelps, the typosed incendiary, and from Fitch and Phelps, delivered that instrument to Gay. This match is made and furnished not only on the same plan and principal, but exactly in conformity to the description given by Phelps. All question in regard to the identity of the instrument in principle and in furniture is excluded, because this match now produced was found in the possession of Gay, and is presented to us as one of two which he alleged to Phelps, he received from Fitch and which Fitch confessed to theirs he had delivered to Gay in February last, to be used in the burning of the new depot as soon as it should be constructed.

You see here a second instrument made and furnished on the same plan and principle. Phelps says, this last one was delivered to him by Fitch and Corwin on the night of the lith of April, to be used by him in burning the depot at Niles, and that it was accurally employed two days afterward in setting fire to that depot. The admissions of Gay that he burned to that depot, were admissions of Gay that he burned the depot, were admissions of any that he burned hoold fail.

I proceed to show that it was impossible. This in-

passed through the finnel. The instrument was then laid in a horizontal position, and after ten or offeren minutes the train ceased to burn. The instrument was left lying in a horizontal position on a stove during the night, and not a spark of fire was found in it in the morning, while the train remained unconsumed. This experiment demonstrated that a match, constructed according to this description and to the models produced in evidence, could not be made effective. The reason of the failure is obvious. The tubes are formed on the principle of the gus barrel, that is, of a barrel of uniform bore, pierced at the bottom with a fuse-hole. It would be impossible to fire a gun charged with cotton pressed down from the muzzle to the fuse of the barrel, even with the aid of an open paper tube in the center of the outton.

Oction.

There is a pistol with large bore. Here you see it charged with a train consisting of a paper tube surrounded by cotton, according to the description and models. I apply a match, the train will not take fire at either end. You say that the fuse hole is too small. Well, take a drill and open the fuse hole as largely as you please. You see at once that the resoit will be the same. Gons are made to shoot with, not to carry slow trains. But you say, that there is only one barrel in the pistol, while the machine has five. Yes, but if you cannot fire one, you cannot fire five. The draft in so close a chamber would be imidequate to sustain combustion of these materials, and if there were enough, the draft would be from the muzzle to the fuse and not from the fuse to the muzzle. The Counsel for the people have added absolute confirmation to the result thus ascertained by the testimony of Dr. Desnoyer, a skillful and I believe emment clemist, who testified that he had made repeated experiments with instruments thus made and charged by limiself, and found it to be impossible to fire them at all.

Another experiment was made by us which resulted in proving that, if a fire of camphene, or of cotton saturated with camphene, was kindled at the tuse, it would be immediately extinguished by placing the lot stone the set of the stage.

would be immediately extinguished by placing the first experiments also showed that if a train, (made of paper and saturated with camphene,) could have been ignited and kept burning, it would have emitted a smoke and an odor of cotton, paper and turpentine, that would have immediately betrayed the presence of the fire.

A further experiment showed that campbene or

A further experiment showed that campbene or turperatine was a good solvent of varnish, that the varnish simost immediately disappeared, that within ten minutes from the time the central tube was filled with campbene the rosistance of the varnish had ceased, the campbene was absorbed into the pores of the block, and the pressure of the external atmosphere (which I believe is axteen pounds averdupoise on each square inch of surface) caused the shoe-maker's wax to bend or cave inwards into the tube, whether the instrument was in an erect or in a horizontal position. After two hours the campbene was found to have passed through the solid block of wood at the further end, and the wax, mable to resist the atmospheric pressure, fell in, and the campbene was

experiments then showed, That if Gay had lighted the match at his louse, must have been extinguished by being covered in his passage through the street.

his passage through the sirect.

2 That if it had continued to burn, the presence of the flame would have betrayed him to all whom he passed whether in the streets or in the depot.

3. That the fre, if burning when he left it in the depot must have died out immediately.

4. That if the train, in opposition to the resistance of natural laws, had continued to burn seven hours, or until 20 o'clock, that the camphene in the central time would, five hours before that time, have flowed out, and that the camphene as well as that with which he sharipes were saturated, would have been ab-

the sharings were saturated, would have been absorbed through the box into the floor on which it

out, and that line campbene as well as that with which the shavings were saturated, would have been absorbed through the box mit the floor on which it was piaced.

But you will ask, may not the instruments with which you experimented, have differed from the original, alleged to have been used by tay! We have, therefore, tested that question. Here is the Nies instrument, with which it is alleged that Phelps did actually set fire to the depot at Nies. You need not be reminded that this was done by Phelps under the supervision of the officers of the Railroad Commany, for the purpose of more effectually charging the defendants. The match furniture remains within, just as when the instrument was brought into Court. You see for yourselves that the trains, made in the same way, are all here, and every one of them remains unconsumed. You see here the paper tube, the thread, the cotton, and the wax on the end of the natrument. You see, moreover, that no particle of smoke or fame ever passed through any of the trains, you yourselves sawed the block around at the intersection of the tubes and holes, and there you see that the cotton was never ignited, not even that which was in contact with the fuse. Nevertheless, you see, with equal distinctness, that the fuse holes have been made large, and the block itself set on fire around the fuse holes, in the fruites attempt to produce combustion of the trains. Turn now to the testimony of Darius Chirk, and you find, that he says the fire which was communicated by this match to bay, the match set fire to the depot by being first set on fire itself, like any other billet of wood.—I take now this match, found in the possession of Gay, and which we cair the Detroit match. You will recollect, that it was produced as one of two which, according to the testimony of Phelps and Lake, were admitted by Pitch to have been given by him to Gay in February last, to burn the new depot. There is no difference between either of them and the matches upon which these experiments were made, we the te

'Mr. Van Dyke—The description includes glue. The court read, "the hole uglazed," ac. Mr Seward—Glazed and olived. Mr. Van Dyke—It includes glue." Mr Seward—"No. Str. Varnish is used as anything with which the glazing was effected. You glaze with varnish, but never with glue. Look at this table. It is varnished, that is, "glazed with varnish."